



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

200 PORTLAND STREET
BOSTON, MASSACHUSETTS 02114

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200
<http://www.ago.state.ma.us>

April 7, 2004

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein

Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

re: EX PARTE - Petition of BellSouth for declaratory ruling and/or waiver regarding cost recovery of wireless local number portability from end-users, CC Docket No. 95-116.

Dear Chairman Powell and Commissioners:

This ex-parte letter responds to the BellSouth petition for declaratory relief filed on November 14, 2003.¹ The Commission should conduct a thorough tariff review proceeding prior to approving any new or enhanced local number portability (LNP) end user charges.

BellSouth, an incumbent local exchange carrier (ILEC), seeks to extend and/or enhance all ILEC LNP special end-user charges to recover ILEC expenses to implement wireless local number portability (WLNP).² BellSouth asserts that these WLNP expenses were not recovered during the initial recovery period for LNP because "WLNP cost data were unknown at the time the initial [LNP] charge was approved."³ ILEC consumers have been paying LNP charges ranging from \$.23 to \$.41 per month for the past five years to enable the ILECs to recover their carrier-specific costs to implement LNP.⁴ In some cases, the ILEC LNP charges have already

¹ *In the Matter of Telephone Number Portability*, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, CC Docket 95-116 (filed November 14, 2003) ("*BellSouth Petition*"). The Massachusetts Attorney General represents Massachusetts consumers in telecommunications, electricity, and natural gas matters and submits this exparte comment in that capacity.

² BellSouth Petition at 1-2.

³ BellSouth Petition at ii.

⁴ *In re Telephone Number Portability*, CC Docket No. 95-116, *Third Report and Order*, FCC 98-82, 13 FCC Rcd 11701 (rel. May 12, 1998).

expired.⁵

Although BellSouth is the only ILEC that filed a petition to extend the LNP charge, other ILECs have filed supporting comments that appear to notify the Commission that they, too, will seek to recover millions of dollars in additional LNP charges over one to six months.⁶ For example, Verizon claimed in its supporting comments that it has incurred over \$48 million in unrecovered WLNP expenses and seeks to extend its LNP charge by four months.⁷ Verizon has not yet filed cost studies or other documentation of its uncollected WLNP costs and projected revenues, so there is no way to discern whether Verizon's WLNP expenses meet the Commission's rigorous LNP cost recovery rules.⁸

In its November 24, 2003 public notice, the Commission sought public comment on the BellSouth petition but did not specify what tariff review the ILECs would have to undergo. The Commission should conduct the same type of tariff review for these petitions as it did in 1998 and should not allow BellSouth, Verizon or any other ILEC to extend the charge or collect WLNP revenues from consumers without a full justification of costs and revenues.⁹ This tariff review should be based on complete cost studies and supporting workpapers that detail and document these ILECs' actual incremental WLNP implementation costs and offsetting intercarrier revenues. The Commission should direct the ILECs to file direct cases supporting their proposed LNP tariff charges in accordance with the previous rules for recovering LNP expenses from end-users.¹⁰ The Commission should allow public comment on the direct cases. After reviewing proposed ILEC tariff filings and supporting materials, the Commission should reject incomplete submissions and inappropriate expenses. This review is critical to ensuring that consumers are not overcharged. Only after such a review can the Commission adequately assess whether, and how much, of the ILECs' WLNP expenses should be passed on to their customers.

⁵ Verizon's \$.23 LNP charge expired March 16, 2004. *See* Verizon FCC Tariff No. 11, p. 31-296. SBC subsidiaries' (Ameritech, Pacific, and SWBT) \$.28 - \$.33 LNP charges expired January 31, 2004. SBC Communications Inc.'s Comments, CC Docket 95-116 (filed December 22, 2003), at 14.

⁶ *See, e.g.*, SBC Communications Inc.'s Comments (December 22, 2003), Response of Verizon, (December 22, 2003), and Comments of Sprint Corporation, (December 22, 2003).

⁷ Response of Verizon, CC Docket No. 95-116 (December 22, 2003), at 7. At this rate, Verizon would recover approximately \$3.4 million from its Massachusetts local service customers. ARMIS FCC Report 43-08 (2003) (Verizon Massachusetts has 3,735,048 switched access lines, accounting for 7.18% of all Verizon switched access lines).

⁸ *In the Matter of Telephone Number Portability*, CC Docket 95-116, *Third Report and Order* (May 12, 1998).

⁹ *See, e.g.*, *In the Matter of Number Portability Query Services*, CC Docket 98-14, *Order Designating Issues for Investigation* (January 30, 1998).

¹⁰ *In The Matter Of Number Portability Query Services*, CC Docket No. 98-14, *Order Designating Issues for Investigation*, CC Docket No. 98-14 (January 30, 1998); *Third Report and Order*.

For all these reasons, the Commission should replicate the tariff review procedures used in 1998 to assure that BellSouth, Verizon and other ILECs do not overcharge their customers for implementing WLNP.

Respectfully submitted,

Thomas F. Reilly

Massachusetts Attorney General

By:

Joseph Rogers
Chief, Utilities Division
Karlen J. Reed
Assistant Attorney General
Utilities Division
Office of the Attorney General
Commonwealth of Massachusetts
200 Portland Street, 4th Floor
Boston, MA 02114
(617) 727-2200